

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: SB 882

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Address Confidentiality/Domestic Violence

DATE: March 18, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Favorable
2.	Naf	Wilson	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill saves from repeal the public-records exemption for the Address Confidentiality Program for Victims of Domestic Violence (ACP or program). The ACP was established in 1998 by ss. 741.401 through 741.465, F.S., and is administered by the Office of the Attorney General. Any victim of domestic violence who relocates to an address unknown to her abuser or potential assailant is eligible to participate in the program.

Currently, the exemption protects from disclosure the addresses, telephone numbers, and social security numbers of ACP participants held by the Office of the Attorney General, the supervisor of elections, or the Department of State. This exemption is subject to review under the Open Government Sunset Review Act (the Act).¹ This exemption will expire on October 2, 2010, unless saved from repeal through reenactment by the Legislature.

Because this bill does not create or expand an existing public-records exemption, it does not require a vote of two-thirds of each house of the Legislature for passage.

This bill repeals s. 3 of chapter 2005-279, Laws of Florida.

¹ Section 3, ch. 2005-279, L.O.F.

II. Present Situation:

Florida's Public-Records Laws

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), art. I, of the State Constitution, provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record² must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency³ records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public record” to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”⁴ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁵

² Section 119.011(12), F.S., defines “public records” to include “all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

³ Section 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁴ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

⁵ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Only the Legislature is authorized to create exemptions to open government requirements.⁶ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁷ A bill enacting an exemption⁸ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁹

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.¹⁰ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹¹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹² provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹³ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.¹⁴ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which ... would injure the affected entity in the marketplace.¹⁵

⁶ Article I, s. 24(c) of the State Constitution.

⁷ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁸ Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁹ Section 24(c), art. I of the State Constitution

¹⁰ Attorney General Opinion 85-62, August 1, 1985.

¹¹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla. 1991).

¹² Section 119.15, F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁶

Address Confidentiality Program for Victims of Domestic Violence

The Address Confidentiality Program for Victims of Domestic Violence (ACP or program) was established in 1998 and is administered by the Office of the Attorney General.¹⁷ The purpose of the program is to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.¹⁸

Any victim of domestic violence who relocates to an address unknown to his or her abuser is eligible to participate in the program. Each participant is assigned a substitute address that includes a street address, an ACP identification code, a post office box number, a Florida city, and a zip code. The address has no relation to the participant's actual location. The Division of Victim Services and Criminal Justice Programs serves as legal agent for receipt of mail and service of process, and forwards first-class mail to the participant's actual location.

Current law provides provisions for ACP participants who desire to vote. The law allows a program participant to vote by absentee ballot, but only after providing his or her physical address. The physical address of the participant is necessary in order to determine the specific ballot to be mailed to the participant. The law further prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.¹⁹ Thus, the participant can vote in the elections for which she is otherwise qualified, while information that might be used to locate him or her remains protected.

Public-Records Exemptions for the Address Confidentiality Program

When the program was created in 1998, the Legislature also enacted a public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants.²⁰ The Legislature authorized the release of the information under the following circumstances:

- To a law enforcement agency, for purposes of executing an arrest warrant;
- Pursuant to court order; or
- Upon cancellation of a participant's certification in the program.

In 2003, the public-records exemption for the program was reviewed, pursuant to the Open Government Sunset Review Act, and the public-records exemption for the addresses, telephone

¹⁶ Section 119.15(6)(a), F.S.

¹⁷ Chapter 98-404, L.O.F., codified as ss. 741.401 – 741.409, F.S.

¹⁸ Section 741.401, F.S.

¹⁹ Section 741.406, F.S.

²⁰ Chapter 98-405, L.O.F., codified as s. 741.465, F.S.

numbers, and social security numbers of ACP participants was reenacted with modification.²¹ Because the bill properly created the exemption for such information held by the supervisor of elections, the exemption was again made subject to the Open Government Sunset Review Act and was scheduled to repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.²²

In July 2003, the Florida Attorney General issued an opinion in response to the following question:

Is a witness's name and address on the back of an absentee ballot confidential and exempt from disclosure when the voter is a participant in the [ACP]?²³

The Attorney General noted that, pursuant to s. 741.465(2), F.S., the names, addresses, and telephone numbers of ACP participants contained in voter registration records and held by the supervisor of elections are exempt from public disclosure. The Attorney General refused, however, to infer that the exemption extended to the signatures and addresses of witnesses on an absentee ballot. The Attorney General acknowledged the possibility that the release of a witness's name or address could lead to the location of a program participant, but insisted that the issue was one for legislative determination.²⁴

In 2005 the Legislature amended the exemptions currently under review, to clarify that the names, addresses, and telephone numbers of ACP participants contained not only in voter registration records, but in *all* voting records, held by either the supervisor of elections or by the Department of State, are exempt²⁵ from public-records requirements.²⁶ The legislation provided that the public record exemption, as amended, would be subject to review under the Open Government Sunset Review Act and would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

III. Effect of Proposed Changes:

The bill repeals the provision subjecting this exemption to the Open Government Sunset Review Act, thereby saving the public-records exemption for the Address Confidentiality Program for Victims of Domestic Violence from repeal.

²¹ The separate statutory provision prohibiting the Office of the Attorney General from disclosing such information was repealed and replaced with the specification that the reenacted public record exemption applied to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the supervisor of elections from disclosing the information also was repealed and replaced with a new subsection that explicitly provided that the information was exempt if contained in voter registration records held by the supervisor of elections. (Chapter 2003-185, L.O.F.)

²² Section 4 of chapter 2003-185, L.O.F.

²³ Florida Attorney General Advisory Legal Opinion, Number AGO 2003-35, July 31, 2003.

²⁴ *Id.*

²⁵ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

²⁶ Chapter 2005-279, L.O.F.

The effective date of the bill is October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill retains an existing public-records exemption. Because the bill does not create or expand an existing public-records exemption, it does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
